

Senate Bill No. 703

CHAPTER 487

An act to amend Sections 6351, 6352, and 6353 of, and to add Section 6354.1 to, the Public Utilities Code, relating to energy transporters.

[Approved by Governor September 24, 1997. Filed
with Secretary of State September 25, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 703, Rainey. Franchises.

Existing law requires a transportation customer, as defined, who receives transportation service from an energy transporter, as defined, to pay a municipal surcharge, as specified, for the use of public lands by a transportation customer.

This bill would specify that for electricity, the energy transporter shall use that portion of the otherwise applicable utility rate or charge which, pursuant to commission order, is removed from the bill of a retail electric customer who has elected direct access to reflect the fact that the customer is purchasing energy from a nonutility provider exclusive of any California sourced franchise fee factor in provisions concerning the calculation of the required surcharge.

The bill would provide that the surcharge amount for electricity shall be inapplicable to the sale of electricity from a nonutility facility to an entity for resale to a retail customer.

The bill would provide as an alternative to the requirements for separately stating the surcharge on the transportation customer's normal bill, that an energy transporter may elect to state on each customer's bill, including both transportation customers and customers receiving bundled services, the amount of that bill which is attributable to local franchise fee charges.

The bill would also exclude from the definition of a transportation customer a cogeneration or nonutility generation facility when the facility transports electricity through its own electric transmission or distribution system or otherwise delivers electricity, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 6351 of the Public Utilities Code is amended to read:

6351. As used in this chapter:

(a) "Municipality" includes counties.

(b) "Energy transporter" means and includes every utility and nonutility owner or operator, or both, of a natural gas or electric transmission or distribution system, or both, subject to a franchise

agreement executed pursuant to this division, provided that proprietary gas pipelines whose franchise fees are set forth in Article 2 (commencing with Section 6231) of Chapter 2 shall not be covered by this chapter.

(c) “Transportation customer” means every person, firm, or corporation, other than the State of California or a political subdivision thereof, transporting gas or electricity on an energy transporter’s transmission or distribution system, or both, when the gas or electricity was purchased by the transportation customer from a third party. Transportation customer shall not include one gas utility transporting gas, for end use in its commission designated service area through another gas utility’s service area, nor shall transportation customer include a utility transporting its own gas through its own gas transmission or distribution system, or both, for purposes of generating electricity or for use in its own operations. In addition, “transportation customer” shall not include a cogeneration or nonutility generation facility when the facility transports electricity through its own electric transmission or distribution system or otherwise delivers electricity in the manner described in Section 218.

(d) “Surcharge” means a municipal surcharge for the use of public lands by a transportation customer as defined in subdivision (c).

SEC. 2. Section 6352 of the Public Utilities Code is amended to read:

6352. (a) Notwithstanding any other provision of law, a transportation customer who receives transportation service on a natural gas or electric transmission or distribution system, or both, subject to a franchise agreement executed pursuant to this division from an energy transporter shall be subject to a surcharge as defined in Section 6353. Notwithstanding any other provision of this chapter, no county shall impose a surcharge pursuant to this chapter in an incorporated area.

(b) Notwithstanding subdivision (a), the surcharge assessed for gas used to generate electricity by a nonutility facility shall be the same as the surcharge assessed for gas used to generate electricity by the electric utility for that quantity of gas described in Section 454.4. The surcharge amount for electricity shall not apply to the sale of electricity from a cogeneration or nonutility facility to an entity for resale to a retail customer.

(c) Nothing in this chapter permits a municipality to recover surcharges imposed pursuant to this chapter on the commodity cost of gas or electricity transported for transportation customers in addition to franchise fees calculated on the imputed value of the same quantities of gas or electricity. If a municipality has a franchise agreement with an energy transporter that requires the energy transporter to pay a franchise fee based upon an imputed value for the commodity cost of gas or electricity transported but not sold by

the energy transporter, the energy transporter may apply the surcharge imposed by this chapter toward the amount of the franchise fee due under the franchise agreement.

(d) Nothing in this chapter shall in any way affect the rights of the parties to existing franchise agreements executed pursuant to this division that are in force on the effective date of this chapter.

(e) Notwithstanding subdivision (a), the surcharge shall not apply to corporations transporting natural gas pursuant to a “gas transportation only” agreement in effect prior to January 1, 1986.

(f) Notwithstanding subdivision (a), an energy transporter of gas that is required to obtain a franchise agreement with a municipality, and that is subject to the jurisdiction of the Federal Energy Regulatory Commission, shall not be required to collect the surcharge imposed by this chapter, but shall be required to negotiate with the municipality under the provisions of this division, franchise fees that recover amounts equivalent to those amounts that would otherwise have been recovered pursuant to this chapter.

SEC. 3. Section 6353 of the Public Utilities Code is amended to read:

6353. For purpose of calculating the surcharge required in Section 6352, the energy transporter shall do the following:

(a) For each transportation customer, determine the volume of transported gas or electricity, in therms or kilowatthours respectively, subject to the surcharge.

(b) Determine the weighted average cost of the energy transporter’s gas or electricity. For gas, the energy transporter shall use its tariffed core subscription weighted average cost of gas (WACOG) exclusive of any California sourced franchise fee factor. For electricity, the energy transporter shall use that portion of the otherwise applicable utility rate or charge which, pursuant to commissioner order, is removed from the bill of a retail electric customer who has elected direct access to reflect the fact that the customer is purchasing energy from a nonutility provider exclusive of any California sourced franchise fee factor. For an energy transporter that does not provide gas or electricity at a commission tariffed rate, the energy transporter shall use the equivalent tariffed rate of the commission regulated energy transporter operating in the same service area.

(c) Determine a product for each transportation customer by multiplying the volume determined pursuant to subdivision (a) by the weighted average cost determined pursuant to subdivision (b).

(d) Determine the surcharge applicable to each transportation customer by multiplying the product determined pursuant to subdivision (c) by the sum of the franchise fee factor plus any franchise fee surcharge authorized for the energy transporter as approved by the commission in the energy transporter’s most recent proceeding in which those factors and surcharges were set. Energy



transporters not regulated by the commission shall multiply the product determined in subdivision (c) by the franchise fee rate contained in their individual franchise agreements in effect in each municipality.

(e) The surcharge assessed pursuant to this chapter applies only to the end use point.

SEC. 4. Section 6354.1 is added to the Public Utilities Code, to read:

6354.1. As an alternative to the requirements of subdivision (h) of Section 6354, an energy transporter may elect to state on each customer's bill, including both transportation customers and customers receiving bundled services, the amount of that bill which is attributable to local franchise fee charges.

